



**STATE OF NEVADA
COMMISSION ON ETHICS**

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE REQUEST
FOR AN ADVISORY OPINION OF
RON PIERINI, Douglas County Sheriff**

Advisory Opinion No. 06-19

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for a hearing on May 19, 2006, on the request for an advisory opinion filed with the Commission by Ron Pierini, Douglas County Sheriff.

The matter was properly noticed as a non-confidential matter and the hearing was open to the public pursuant to NRS 281.511(5)(c). Mr. Pierini waived confidentiality with regard to this matter. Mr. Pierini appeared in person, was sworn, and presented testimony.

Mr. Pierini sought an opinion from the Commission as to whether his participation in promoting the passage of a ballot advisory question (hereinafter "ballot question") to impose a one-half of one percent increase in the Douglas County sales tax to help fund projected manpower and equipment needs of Douglas County's criminal justice system violates the Ethics in Government Law, specifically, NRS 281.554.

After fully analyzing the request for an advisory opinion and considering all of the facts and circumstances presented, the Commission deliberated and orally advised Mr. Pierini of its

decision in the matter. The Commission incorporates its oral decision into the following findings and issues this opinion.

FINDINGS OF FACT

1. At the time of the hearing, Mr. Pierini was the Douglas County Sheriff.
2. Mr. Pierini's term as Douglas County Sheriff expires in December of 2006.
3. Mr. Pierini is an unopposed candidate for reelection this year.
4. Mr. Pierini intends to support passage of a ballot question in November 2006 to impose a one-half of one percent increase in the Douglas County sales tax. If the ballot question passes, the proceeds would help fund projected manpower and equipment needs of the criminal justice system, including law enforcement, in Douglas County.
5. Mr. Pierini took the proposed ballot question to the Douglas County Commission where it was approved to appear on the November 2006 ballot.
6. Mr. Pierini seeks to promote the ballot question by making various community presentations. Mr. Pierini also plans to use public facilities for meetings regarding the ballot question.
7. A citizen advisory committee was to be formed to promote and inform the public on the ballot question.
8. If the Commission determines Mr. Pierini's proposed activities conflict with the Nevada Ethics in Government Law (NRS 281.411 to NRS 281.581, inclusive), he will refrain from participating in them.

CONCLUSIONS OF LAW

1. At the time of the hearing, in his capacity as Sheriff, Mr. Pierini was a public officer as defined in NRS 281.4365.
2. The Commission has jurisdiction over this matter pursuant to NRS 281.511(1) and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved unanimously, the Commission renders the following opinion:

OPINION

The principal issue in this opinion is whether NRS 281.554 allows Mr. Pierini to participate in supporting a ballot question to impose a one-half of one percent increase in the Douglas County sales tax to help fund projected manpower and equipment needs of Douglas County's criminal justice system.

NRS 281.554 provides:

1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:
 - (a) A ballot question.
 - (b) A candidate.
2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:
 - (a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

(1) The public office held by the public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

(1) The public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

(1) A press release issued to the media by a governmental entity; or

(2) The official website of a governmental entity.

(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.

The Commission believes that the legislature did not intend for this statute to prohibit public officials from performing public duties that are expected of them while in office. A contrary interpretation of the statute would not comport with reason and public policy.¹

Mr. Pierini is running unopposed for reelection as Douglas County Sheriff. Mr. Pierini, the Sheriff's Office and other public agencies, have been active in getting information regarding the ballot question to the public. Mr. Pierini expressed to the Commission his desire to promote the ballot question in his capacity as Sheriff. Also, Mr. Pierini inquired whether using public facilities for public meetings about the ballot question would be proper.

As explained by Mr. Pierini, if approved, the ballot question would fund much needed staff and equipment for the Douglas County criminal justice system, which includes law enforcement and the court system. The Commission acknowledges that the proposed goal of the ballot question falls within the scope of Mr. Pierini's duties as Sheriff. Still, the Commission notes that the exception found in subsection 5 of NRS 281.554 to the prohibition against a public officer causing "a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question" (subsection 1 of NRS 281.554) is specifically restrictive. Under the statute, expenditures are allowed only "to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question" and where "persons both in support of and in opposition to the ballot question participate in the television program." NRS 281.554(5).

Therefore, the Commission opines that Mr. Pierini may cause a governmental entity such as the Sheriff's department to incur or make an expenditure regarding the ballot question only in the instance of creating or disseminating a televised forum where persons from both sides of the ballot question are invited to participate.

¹ See, *Cannon v. Taylor*, 87 Nev. 285, 288, 486 P.2d 493, 495 (1971) (if a statute is ambiguous, it can be construed "in line with what reason and public policy would indicate the legislature intended.")

Additionally, the Commission cautions Mr. Pierini that when promoting the ballot question, he must be mindful of the prohibition against using one's public office for an unwarranted privilege or advantage in violation of NRS 281.481(2).

NRS 281.481, subsection 2 provides:

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.²

(b) "Unwarranted" means without justification or adequate reason.

If the voters approve the ballot question, it may increase the budget of the Douglas County Sheriff's office, which may have some eventual impact on Mr. Pierini's position as Sheriff. Mr. Pierini is advised to look at the "privileges, preferences, exemptions or advantages" that he, as Sheriff, might acquire with regard to the ballot question and to determine whether those privileges, preferences, exemptions or advantages are "unwarranted". If the ballot question advances the purposes of the Sheriff's department as a whole, such advantages may be fully warranted.

The Commission points out that people who are opposed to raising taxes in Douglas County may closely scrutinize Mr. Pierini's activities and may report any violations of Nevada's Ethics in Government Law in his efforts to promote the ballot question. Therefore, the Commission warns Mr. Pierini to be cautious in his endeavors and avoid the use of his official facilities, accouterments, and the like, except where specifically allowed by law to do so.

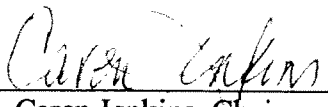
² NRS 281.501(8) defines "commitment in a private capacity to the interest of others" as a commitment to a person: (a) Who is a member of his household; (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) Who employs him or a member of his household; (d) With whom he has a substantial and continuing business relationship; or (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

Therefore, the Commission finds that Mr. Pierini's participation in seeking a ballot question to impose an increase to Douglas County's sales tax to help fund projected manpower and equipment needs would not violate NRS 281.481, so long as Mr. Pierini does not use his official position to obtain unwarranted privileges, preferences, exemptions or advantages. Similarly, Mr. Pierini's participation in seeking the ballot question would not violate NRS 281.554, so long as the support of the ballot question does not cause a governmental entity, such as the Sheriff's department, to incur an expense or make an expenditure to support the ballot question, unless the expenditure relates to television programming as allowed under subsection 5 of NRS 281.554.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: October 31, 2006.

NEVADA COMMISSION ON ETHICS

By: 
Caren Jenkins, Chairman